

THE GUARDIANSHIP STUDY SURVEY AND FINDINGS

The purpose of this study was to determine the extent of the problem related to clients receiving services while under guardianship rules, and being moved without proper notification to responsible entities. The goals of this study were to investigate why these problems are occurring and to make recommendations to address the problems. With the technical assistance of Yvonne Copeland and Michael Owens of the NC Council of Community Programs, a survey was written and sent to two groups: LME Directors and NC Guardianship Association (NCGA) members. Survey questions were similar for each group and responses were submitted in narrative form. Because of duplicate answers in the first survey to questions 2,3,4, and 5, those answers were grouped into possible multiple choice answers for questions 2& 3 in the second survey. Below is a comparison of answers from the two surveys.

Survey Questions and Responses

(1) Individuals receiving services who are under guardianship rules are sometimes moved without proper notification to their guardian or other responsible persons. To what extent do you consider this a problem in your LME service area?

<u>LME Directors (14 replies):</u>	Rarely_____	71%
(Survey No. 1)	Occasionally_____	21.4%
	Frequently_____	7.1%
<u>NCGA members (96 replies):</u>	Rarely_____	68.1%
(Survey No. 2)	Occasionally_____	23.4%
	Frequently_____	7.4%

(2) What do you think is the cause(s) for these failures to give proper notice according to guardianship requirements?

<u>LME response:</u>	<u>NCGA % of</u>
<u>agreement</u>	

- Provider is unaware of guardianship rules_____59.89%
- Move made for convenience of provider_____30.4%
- Lack of time in crises_____25%
- Guardian needs to clarify expectations with provider_____23.4%
- Other: 13 responses. See Appendix C

(3) Please list suggestions you have for correcting these occurrences or reducing the number of them.

<u>LME response</u>	<u>NCGA % agreement</u>
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| • Inform providers of the role/authority of a client's guardianship plan_____ | 88.5% |
| • Ensure that providers are aware individual has a guardian_____ | 78.1% |
| • Encourage guardians to attend meetings about clients
and to be more active in the client's life_____ | 74.0% |
| • Review and update records frequently_____ | 65.6% |
| • Clients and guardians should report infractions_____ | 52.1% |
| • Create a statewide approach to enforcement of guardian rules_____ | 51.0% |
| • Impose sanctions, fines, citations when infractions occur_____ | 31.3% |
| • Other: 34 responses: See Appendix E | |

(4) Please list information and resources you think the State CFAC should seek to make this Guardianship Study effective.

- NC Guardianship Association
- Arc of NC, Guardianship Division
- Institute of Government
- 35A - 1105 of NC General Statutes
- Department of Social Services

(5) How can a SCFAC study of guardianship issues be useful to you as an LME Director? (For LME Directors survey only.)

The most common responses were:

- Perhaps the data and findings could be used to support a request for improved funding for guardianship services via LMEs who are currently forced to provide or contract for guardianship services via IPRS funding or scarce LME funds.
- This study could be a prompter to the General Assembly to follow through with further review of the current statutes.

- With reform, merging LMEs and functions, and the decentralization of the entire system the wards are getting lost in the conversation. The division needs to look at better ways to address the guardianship needs of North Carolina wards.
- Increasing awareness would make carrying out guardianship responsibilities easier and hopefully decrease incidents of wards being moved or treated without guardianship involvement.
- Guardianship is a huge responsibility and I believe all the information that is provided to LMEs on this matter is extremely helpful.

FORUM COMMENTS AND SUGGESTIONS

In addition to the surveys, the sub-committee Chairperson was invited by Mary Hooper of the NC Council of Community Programs to discuss this study with members of the Advocacy and Customer Service Forum. About 25 LME representatives were present. Results of the two surveys were shared and discussed with members of the forum confirming that this problem does exist. Causes and solutions were considered and a written summary of the meeting was prepared by Mary Hooper. There was agreement from this group regarding comments made in the two surveys. Forum participants confirmed the need for better training of providers and better education about guardianship responsibilities for guardians. The summary will incorporate the main points from the forum. (See Appendix F).

SUMMARY

Survey results confirm that failure to follow guardianship rules does occur occasionally in North Carolina's service system causing concern for clients, guardians and Local Management Entities. It was suggested by a Forum participant that moving clients without proper guardianship notification tends to occur more frequently with facilities that are licensed by DHSR (supervised living), especially with larger providers that have several homes. The reasons listed by survey participants for failure to properly observe guardianship rules range from a lack of provider training regarding different types of guardianship requirements to instances when clients were moved merely for the convenience of the provider. Guardians can fail to understand and perform their responsibilities due to lack of training. Guardians need to be more involved in the life of their ward. Sometimes the LME staff lacks either time or funds to monitor provider actions adequately or providers lack time in an emergency situation to notify proper authorities. Provider staff turnover and unfamiliarity of new staff with clients can create problems when urgent incidents occur. There are no penalties, fines or sanctions imposed for failure to give proper notice to responsible parties. Most importantly, there is no consistent statewide directive for implementing guardianship rules. It was suggested that Guardianship rules/law must be rewritten to delineate when and how a local clerk of Court appoints a public agent guardian of the person. Oftentimes, the Clerk appoints who he or she wants rather than the one that is best suited to meet the primary diagnosis of the ward. One forum participant stated that guardianship laws are not adequate for adults who are deemed incompetent.

Solutions for correcting this problem of failing to notify responsible persons or suggestions for lessening the number of occurrences fell into several areas of responsibility for clients, guardians and providers. A majority of responders suggested that often providers are not informed about

the role and authority of guardians. Providers may not even be aware that an individual has a guardian, especially in the case of an adult client. Guardians should be encouraged to provide written expectations of communication with providers including guardian participation in planned meetings for clients. A suggestion was made to tag the residents file, so all staff are trained and aware of the guardianship type for individual clients. Keeping records of people with guardians up to date and reviewed regularly is essential for the client, provider and LME. Guardians should know when notification and involvement is expected from the provider. Clients and guardians should be encouraged to report infractions to the Local Management Entity and sanctions, citations or fines should be imposed when infractions occur. Fifty percent of survey respondents suggested creating a statewide approach to enforcement of guardianship rules rather than a county or local approach. LME Directors or providers need to ensure that the appropriate agency/individual is serving as guardian of the person. If at any time staff feel that a guardian is not fulfilling his/her responsibility, they should feel free to call into question their actions and they should resign their role via the Clerk of Court and request that another guardian be appointed. One Forum participant recommended that attendance at the Division of Aging and Adult Services guardianship training should be mandatory for all public agents serving as guardians.

Clearly, better training and education for both providers and guardians is essential for protecting the vulnerable clients receiving services in North Carolina. CFAC members from 4 County (now Beacon LME) are to be commended for bringing this situation to the forefront.

Recommendations Regarding Legislation, Requirements and Funding

- Recommend that guardianship law statutes be reevaluated, changed if not adequate, and enforced.
- Movement between provider locations should not occur without first notifying guardians.
- Guardians should be included in all Treatment Team meetings.
- Recommend that DHHS (Department of Health and Human Services) initiate legislation to establish a state-wide directive to implementing guardianship rules.
- Recommend that the DHHS mandate that substantial penalties be assessed against any provider who does not report movement of any vulnerable person in real time.
- Recommend that the DHHS create policies that mandate that substantial penalties be assessed against any provider who fails to inform the responsible supervising/guardianship parties prior to movement of any vulnerable person.
- Recommend that the Division of MH/DD/SAS provide funds to LMEs for monitoring providers' client records.
- That a statewide central listing of clients with a guardian, and type, be established for hospitals/legal officials/providers to access.
- That provider training should stress their responsibility for following guardianship rules. It

was suggested that the NC Guardianship Association provide training to providers at the LMEs.

- That the provider tag chart of client with guardian information and train new employees about individual guardian requirements.
- That when a guardian is appointed his/her responsibilities are explained thoroughly by Clerk of Court or Social Worker.
- That providers welcome and encourage guardian participation in the ward's activities.

APPENDIXES

A - North Carolina General Statutes Chapter 35A

B - Survey form to LME Directors

C - Responses of survey to LME Directors

C 1- Other responses

D - Survey form to NC Guardianship Association members

E - Responses of NC Guardianship Association Members

E 1- Other responses

F - Advocacy and Customer Service Forum report